

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals of the District of Columbia.

OCTOBER TERM, 1918

No. 3191.

516

LADIES OF THE MACCABEES, OTHERWISE KNOWN AS
THE LADIES OF THE MODERN MACCABEES, A CORPO-
RATION, APPELLANT,

vs.

IDA MAY MATHENY.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JUNE 15, 1918.

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Court of Appeals of the District of Columbia.

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Court of Appeals of the District of Columbia.

No. 3191.

LADIES OF THE MACCABEES, Otherwise Known, &c., Appellant,

vs.

IDA MAY MATHENY.

a Supreme Court of the District of Columbia.

No. 60791. At Law.

IDA MAY MATHENY, Plaintiff,

vs.

LADIES OF THE MACCABEES, Otherwise Known as LADIES OF THE
MODERN MACCABEES, a Corporation, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of
Columbia, at the City of Washington, in said District, at the times
hereinafter mentioned, the following papers were filed and proceed-
ings had, in the above entitled cause, to wit:

1 *Declaration, &c.*

Filed November 6, 1917.

In the Supreme Court of the District of Columbia.

No. 60791. At Law.

IDA MAY MATHENY, Plaintiff,

vs.

LADIES OF THE MACCABEES, Otherwise Known as LADIES OF THE
MODERN MACCABEES, a Corporation, Defendant.

Plaintiff, Ida May Matheny, sues the defendant, Ladies of the
Maccabees, otherwise known as Ladies of The Modern Maccabees,
a corporation, and declares as follows:

On, to wit, January 6, 1916, and for a long time prior thereto, defendant was and ever since has been a corporation doing business in the District of Columbia as a Life Insurance Company, Benefit Order and Association, and was formed and conducted for the mutual benefit of its members and their families and had subordinate bodies called "Hives" in the District of Columbia and elsewhere and said Hives are a part of the general organization of defendant and defendant carries on its business with and through them in the respective localities where they exist.

On said January 6, 1916, defendant was conducting and carrying on said business by and through said Hive and Hives in the District of Columbia and has ever since continued so to do.

Prior to said January 6, 1916, defendant had organized as a part of it and as one of its Hives in the District of Columbia a certain

2 Hive No. 876, known as and being Congressional Hive, and as of said date, January 6, 1916, defendant issued and delivered its benefit certificate, life insurance policy and contract of insurance to and in the name of one, Adelia Mockabee, wherein and whereby defendant promised and agreed to pay upon the death of said Adelia Mockabee, the sum of one thousand dollars to plaintiff who is named as sole beneficiary in said policy or certificate, on condition that said Adelia Mockabee pay defendant all assessments and dues made and required by it and upon the event of her death she having in every particular complied with the laws of defendant.

Subsequent to the issue and delivery of said certificate and life insurance policy to said Adelia Mockabee, defendant consolidated said Congressional Hive No. 876 with District of Columbia Hive, a subordinate body of defendant in the District of Columbia, and until the time of her death she continued to be a member of said Hive and of defendant.

During all the time said Adelia Mockabee was a member of said Hive and Hives and a member of defendant, she duly tendered and paid her dues and assessments therein as made and required by defendant and in all particulars complied with the laws of defendant.

Heretofore, to wit, on or about August 15, 1917, said Adelia Mockabee died leaving her surviving the plaintiff herein and at the time said Adelia Mockabee died, she was a beneficial member of said Hive and of defendant and said certificate and life insurance policy was in full force and effect and defendant was duly furnished the required proofs of said death.

3 The whole certificate and life insurance policy herein as delivered to said Adelia Mockabee, is hereto attached and made a part hereof.

Plaintiff has demanded of defendant said one thousand dollars due her as beneficiary named in said certificate and policy and defendant has refused and still refuses to pay the same or any part thereof.

Wherefore plaintiff brings this suit and claims of defendant One thousand (\$1,000) dollars, with interest thereon, besides costs.

JEFFORDS & DUTTON,
Attorneys for Plaintiff.

SCHEDULE 3

No. —

Ladies
Modern Maccabees.

\$1,000.

Age
45

(Vignette.)

Rate of Assessment,
\$2.21*Benefit Certificate.*

This certifies, that Lady Adelia Mockabee has been admitted to membership in the Ladies of the Modern Maccabees, and is entitled to all the rights, benefits and privileges therein, in accordance with the laws of the Order, under Whole Life Schedule 3.

This certificate is issued under an application for membership and medical examination furnished by the member in writing, signed by her, and warranted to be absolutely true in every particular as written, which application, medical examination, and the Laws of the Order now in force or that may hereafter be adopted, and this certificate shall constitute the contract between the member and the Order.

That at her death (except death from small-pox)* the amount of one assessment upon the Benefit membership, not exceeding the sum of One Thousand Dollars, will be paid as a benefit to Ida May Matheny bearing relationship to her of Sister, upon filing the required proofs of her death and the surrender of this certificate within twelve calendar months from date of death, provided, that her application for membership and medical examination are absolutely true as written, and that she shall have in every particular, complied with the Laws of the Order now in force, or that may hereafter be adopted.

In testimony whereof, the Ladies of the Modern Maccabees has caused its Great Commander and Great Record Keeper to sign their names and affix hereto its official seal this 6th day of Jan. 1916.

[Corporate Seal.]

FRANCES E. BURUS,
*Great Commander.*EMMA E. BOWER,
*Great Record Keeper.**Application for Change of Beneficiary and New Certificate.*

I, — of — Hive, No. —, to whom the within certificate was issued, do hereby revoke my former designation of beneficiary and do hereby designate as my beneficiary — bearing relationship to me of — Occupation—

I enclose herewith Fifty Cents to pay for New Certificate.

Witness my hand and seal this — day of — 191—.

—, [SEAL.]
Applicant.

[*Words enclosed in parentheses erased in copy.]

Consent given this — day of — 191—, and New Certificate bearing same number ordered issued.

— — —,
Great Record Keeper.

Application for Transfer to Schedule —.

Transfers Can Only Be Made from a Lower to a Higher Plan.

I, — — —, do hereby surrender my certificate No. — and request that a new one be issued to me in Schedule — upon which I agree to pay the rating in said Schedule — at my attained age at date of transfer. I have paid the last Assessment No. — due this month in Schedule —, and in all other respects will conform to and abide by the laws of the Order.

— — —,
Applicant.

6 Consent given this — day of — 191— and new certificate bearing same number ordered issued.

— — —,
Great Record Keeper.

(Endorsed:)

No. 6644.

(\$.)

*Whole Life
Benefit Certificate.*

SCHEDULE 3.

Issued by The
Ladies of The Modern Maccabees.

(Vignette.)

To Lady
Adelia Mockabee

Of Congressional Hive, No. 876
Located at Washington State of
D. C.

Date Admitted Dec. 31, 1915.

Age 45. Rate, \$2.21.

Occupation, Clerk.

First Assessment #I.

Affidavit of Merit.

* * * * *

7 I, Ida May Matheny on oath say that I am the plaintiff herein and file this affidavit with my declaration and that I am personally acquainted with the facts of this case which are as follows:

I am the sister of Adelia Mockabee, the insured, and am beneficiary named in the policy or certificate of life insurance on which this suit is brought.

At the time said Adelia Mockabee became a member of defendant and of its Hive and Hives, in the District of Columbia, I was a member of same and have so continued ever since.

At the time said policy or certificate was issued to said Adelia Mockabee, she was living with me in my home and so continued until her death.

From the time of the delivery of said certificate or policy Adelia Mockabee tendered and paid to the defendant and said Hives all dues and assessments required, and otherwise fully complied with the law, rules and regulations of defendant and said Hives.

After the death of said Adelia Mockabee the required proofs of her death were made and placed in the hands of defendant.

I have read the foregoing declaration herein and the allegations therein made are true.

I saw the said life insurance policy and certificate delivered to my sister, Adelia Mockabee, and there was not delivered with it a copy of her application made for it and there was nothing else delivered with it.

Said Adelia Mockabee did and caused to be done each and every thing necessary to maintain said life insurance policy and certificate in full force and effect and it was in full force and effect at the time of her death.

8 As beneficiary named therein, I have done and caused to be done everything requisite and necessary to entitle me to the payment of the one thousand dollars insurance mentioned in said policy, and have demanded same of defendant and it has not been paid nor has any part of it been paid, and all of said One thousand (\$1,000) dollars with interest is now justly due and payable to me, exclusive of all set offs and just grounds of defense.

IDA MAY MATHENY.

Subscribed and sworn to before me this 5th day of November, A. D. 1917.

[SEAL.]

P. C. KING,
Notary Public, D. C.

Plea in Abatement.

Filed January 11, 1918.

* * * * *

The above named Ladies of the Maccabee, a corporation, appearing specially for the purpose of this plea and not otherwise, says the plaintiff ought not to have or maintain her said action because on the 6th day of November, 1917, the day of the filing of this suit there was and still is pending on the equity docket of the Supreme Court of the District of Columbia a certain cause known as Adelia Mockabee vs. Ladies of the Modern Maccabees, a corporation, In

Equity, No. 35178, said Adelia Mockabee being the same person in the plaintiff's declaration mentioned and said Ladies of the Modern Maccabee, so called, being the same corporation in the Plaintiff's declaration mentioned. And in the said equity cause aforesaid the said Adelia Mockabee, by her bill of complaint, filed on the 2nd day of May, 1917, among other things, set forth in substance that on the 6th day of January, 1917, the said Ladies of the Maccabee issued to the said Adelia Mockabee and in her name its benefit certificate whereby it agreed to pay the sum of one thousand dollars to Ida May Matheny, the plaintiff herein, who is in the said certificate named as sole beneficiary, said corporation being a beneficial order. And in and by said bill the said Adelia Mockabee set forth that sworn charges had been preferred in said corporation, under color of its by-laws, against the said Adelia Mockabee, that she obtained her beneficial membership in the said corporation and the issue of said certificate by false representations as to her health, which charges said corporation was about to try in its own tribunal upon notice, she being unable to attend because of illness. And thereupon the said Adelia Mockabee prayed an injunction against the said corporation forbidding such trial and cancellation, which injunction was thereupon accordingly granted. And thereupon this corporation, by its answer in the said equity cause, submitted to the jurisdiction of the said court therein and, among other things, prayed the cancellation of the said certificate, as affirmative relief, upon allegations of fraud and misrepresentations made by said Adelia Mockabee touching her condition of health in her written application for said certificate and for membership in the said benefit corporation, as in and by the record aforesaid fully appears.

And on or about the 15th day of August 1917, pending said equity cause and before hearing or decree therein, the said Adelia Mockabee died.

And this corporation says the plaintiff herein, although she is the sole beneficiary named in the certificate aforesaid and has been duly named as executrix and residuary legatee in and by the will of said Adelia Mockabee, as it is informed and believes, has failed to suggest, in said equity cause, the death of said Adelia Mockabee and refuses to become or be made a party thereto.

And the said court in the said equity court acquired jurisdiction of the same cause of action sued upon herein and this corporation by its said answer and prayed for affirmative relief as aforesaid acquired rights in said litigation to have the said certificate cancelled.

LADIES OF THE MACCABEE,

A Corporation,

By JAMES B. ARCHER,

Attorney in Fact.

DISTRICT OF COLUMBIA, *To wit:*

I, James B. Archer, do solemnly swear that I have read the foregoing plea by me subscribed and know the contents thereof; that the statements therein made as of personal knowledge are true, and those made upon information and belief I believe to be true.

JAMES B. ARCHER.

Subscribed and sworn to before me this 11th day of January, 1918.

JOHN R. YOUNG,
Clerk,

By C. B. COFLIN,
Ass't Cl'k.

11 . *Motion to Strike Out Plea and for Judgment.*

Filed January 11, 1918.

* * * * *

Comes now the plaintiff in the above entitled cause, by her attorneys, and moves the court to strike out the Plea in Abatement heretofore filed herein and for cause says there is no prior pending equity suit between the parties hereto or their privies, and the equity suit mentioned in said Plea of Abatement has abated by the death of Adelia Mockabee, and the subject matter involved in said suit when it was alive is not the same as that involved in this suit.

And the plaintiff moves for judgment herein against the defendant for want of a plea, and for want of a sufficient plea.

JEFFORDS & DUTTON,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

Friday, January 11th, 1918.

Session resumed pursuant to adjournment, Hon. William Hitz, Justice presiding.

* * * * *

By Judge Gould.

Upon consideration of the motion of plaintiff filed herein to strike out the plea of abatement filed herein, it is ordered that said motion be and the same is hereby granted. Whereupon said plea
12 in abatement is hereby stricken out, with leave to defendant to plead as advised within ten days hereof.

Defendant's Pleas, &c.

Filed March 19, 1918.

* * * * *

1. For a plea to the plaintiff's declaration, the defendant says it never was indebted in manner and form as alleged.

2. And for a further plea the defendant says that before and at the time of the occurrence of the matters and things set forth in the

declaration, defendant was a fraternal beneficial association, incorporated and exercising its corporate functions under and by virtue of the laws of the State of Michigan, through the lodge system with a ritualistic form of work and respective form of government and doing business solely for the benefit of its members and their beneficiaries and not for profit, as therein provided. That Section 7 of Act 169 of the Public Acts of the State of Michigan for the year 1913 providing for the incorporation and the regulation of the business of Fraternal Beneficiary Associations, provides as qualification of membership as follows:

"Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society."

13 Section 8 of said Act provides:

"Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary has been supervised and approved in accordance with the laws of the the society and the application for membership, and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member."

Section 12 of said Act so far as material provides:

"Every such society shall have the power to make a constitution and by-laws for the government of the society; the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to or amend such constitution and by-laws, and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society."

Section 20 of said Act provides:

"Waiver of the provisions of the laws. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members."

14 Section 30 of said Act provides:

"Taxation. Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment."

That the articles of corporation of Defendant provide in part as follows:

Article II. Its legislative body shall be known as the Great Hive and its subordinate bodies shall be called Hives.

Article IX. This corporation shall have power to make its own laws, rules, and regulations, and to establish sick, accident, and funeral benefits as auxiliary branches thereof.

Article X. It (The Great Hive) shall have the power, when an appeal is made under the laws of the Order from the actions or findings of the Executive Committee, to decide as to the validity of all death claims, or any other claims which a member, or the beneficiary of a member, may have against it.

15 Article XIII. The Great Executive Committee of the Ladies of the Maccabees shall consist of the Great Commander, Great Lieutenant Commander, Great Record Keeper, Great Finance Keeper, and Acting Past Great Commander and two life benefit members elected from the body. The members of the Great Executive Committee, as so constituted, shall act in the recess of the Great Hive, and perform such duties as may be provided for by the laws, rules and regulations thereof; by virtue of their respective offices, the Great Commander shall be the chairman, and the Great Record Keeper shall be the secretary thereof.

The By-Laws of Defendant which form a part of the contract in force at the time said certificate sued on was issued, so far as material, provide as follows:

Section 3. The Great Hive is the highest tribunal of the Order, and no Subordinate Hive can be formed or continue to exist without its sanction. It shall possess the right and power of receiving appeals and redressing grievances arising in Hives; of deciding as the last resort all questions arising out — its Laws and the Rules of the Order, and of doing all other legitimate acts necessary to promote the interests of the Order; provided the same are not in violation of the laws of the land. The Great Hive shall have the power, when an appeal is made under the laws of the Order, from the actions or findings of the Great Executive Committee, to decide as to the validity of all death claims or any other claim which a member, or the beneficiary of a member, may have against it, and its decisions shall be final and binding upon every member and their beneficiaries, and no suit at law or in equity shall be commenced or maintained by any member or beneficiary against the Great Hive.

Section 82. The Great Executive Committee shall have the power to suspend or expel from the Order any member,—

1. Who obtained her membership or reinstatement by false or untruthful statements in her written application for membership or reinstatement.

16 Section 83. When any member of the Order in good standing, shall file with the Great Record Keeper a complaint in writing, sworn to before some officer authorized to administer oaths, accusing a member of being guilty of any of the offenses specified in the preceding section, or any such complaint be made by the Commander, Record Keeper or Finance Keeper of a Subordinate Hive, under the seal thereof, or by a Deputy Great Commander, the Great Record Keeper shall lay such charges before the Great Executive Committee and if it shall appear to the said Committee that such charges ought to be investigated, it shall by resolution so determine,

and fix a time and place therein when the accused shall appear before said Committee and make answer to such charges.

Section 84. The Great Record Keeper shall serve a copy of such citation, together with a copy of the charges, upon the accused at least twenty days before the time fixed for the hearing or the time to which the hearing may be adjourned, and shall also notify the accuser. The Great Executive Committee shall have the right to adjourn the hearing from time to time as may be deemed necessary.

Section 85. On the hearing, the witnesses may be produced and sworn or affidavits may be filed in behalf of or against the accused. The Great Executive Committee shall hear and consider all the testimony offered and may take such other or further proceedings as it shall seem just, and the decision of the Committee on such complaint shall be final, unless an appeal is taken to the Great Hive.

Section 86. The decision of the Great Executive Committee on such complaints shall be shown by a resolution to be spread upon its records. In case the decision is suspension it shall fix the condition thereof. In case the decision is expulsion the Great Executive Committee shall so declare and order the benefit certificate issued to the accused to be cancelled and annulled. No member shall be expelled from the Order, under the foregoing proceedings, without a two-thirds vote of the Great Executive Committee. In case the member is found guilty of an offense which in the judgment of the Great Executive Committee materially affects her beneficial contract of membership, the penalty in all such cases shall be expulsion.

Section 87. The decision of the Great Executive Committee on such complaints shall be final and binding upon the member or her beneficiary unless an appeal be taken to the Great Hive and in such case decision of the Great Hive shall be final. No suit at law or in equity shall be brought or maintained against the Order to modify or set aside or annul the determination of the Great Executive Committee upon complaints and trials as provided in the preceding sections.

17 Section 88. After receiving the complaint and pending the hearing and determination thereof, the Great Executive Committee shall have power by resolution to suspend the accused from all rights and benefits in the Order, in which case notice of such suspension shall be served upon the accused and also upon the Record Keeper and Finance Keeper of the Hive, who shall be instructed to receive no further assessments, per capita tax or dues from such member until such charges are finally heard and determined.

Section 89. In case a member shall die pending the hearing and determination of such charges, the Great Record Keeper shall notify the beneficiary or beneficiaries of the pending of such charges and the time and place the same will be heard and such beneficiary shall have the same right as the member to defend against such charges, and if such charges are finally found to be true, the Great Executive Committee shall have power by a two-thirds vote, to cancel and annul said benefit certificate in like manner and with like effect as if the member had not deceased, in which case the beneficiary shall have no right under such benefit certificate.

Section 92. The Great Executive Committee shall have power to pass on all death claims referred to it and total, permanent and old age disability claims and to settle and adjust or compromise the same, when in its judgment the best interests of the Order are subserved thereby. If in its judgment any such claim is not on its face a valid one, the Great Executive Committee shall by resolution duly adopted, so declare and fix a time and place therein for the hearing of such claim, when the beneficiary or his attorney or both may appear and present such evidence as he may have to establish the justice of such claim, at which time or any time to which same may be adjourned the said committee shall try, hear and decide upon the justness or validity of such claim.

Section 94. Appeals from the decision of the Great Executive Committee must be filed with the Great Record Keeper within sixty days thereafter and in default thereof the decision of the Great Executive Committee shall be final.

4. That the benefit certificate sued on was issued to Adelia Mockabee in reliance upon the truthfulness of the answers contained in her written application therefor signed by the said Adelia Mockabee which contains an agreement as follows: "I hereby warrant that the above answers as written are true in every particular and I hereunto
 18 affix my name this 23d day of December, 1915." (To which her name was signed.) Also "I hereby warrant that the above are fair and true answers to the foregoing questions and I hereby agree on my own behalf and on behalf of my beneficiary or beneficiaries, that these statements with this application and laws now in force or that may thereafter be adopted by the Ladies of the Modern Maccabees, shall form the basis of my contract for life benefit; that any untrue or fraudulent answers or suppression of facts,
 * * * shall viciate my life benefit certificate and forfeit all payments made thereon, and that this application shall not be binding on the Order until approved by the Great Medical Examiner and I am duly initiated * * * . I further agree on my own behalf and on behalf of my beneficiary or beneficiaries that all privileges allowed by any law to me or my physicians attending me either before, at or since the time of my application for membership shall be the same and are hereby waived and such physicians are fully authorized to testify to any fact within their knowledge regarding my physical condition at such time of which they may have any knowledge.

I hereby expressly waive for myself and my beneficiary the privilege or benefit of any and all State Laws, which are now or may be hereafter in force, disqualifying any physician from testifying from any information obtained by him in a professional capacity while attending me as a patient on rendering such testimony incompetent, and any physician who has heretofore or may hereafter attend me professionally, I hereby authorize in any suit or proceedings involving my contract of membership in this Order, to testify to any information gained by him from observation or personal examination or to any disclosure made by me to him, I also for myself
 19 and beneficiaries waive the provisions of any State Law disqualifying any officer or agent of the Great Hive or Subordi-

nate Hive from testifying to any fact accompanying the validity of any claims which may arise under my certificate."

That in said application, and for the purpose of enabling defendant to determine whether it would accept Adelia Mockabee as a beneficiary member, she was asked and answered questions as follows:

Q. Are you in good health at the present time? A. Yes.

Q. Have you now or have you ever had uterine hemorrhages? A. No.

Q. Have you now or have you ever had any disease of the uterus or its appendages? A. No.

Q. Is any such disease suspected by you? A. No.

Q. Are you regular in your monthly periods? A. Yes.

Q. Are you now or have you ever been troubled with irregular or excessive menstruations? A. No.

Q. Give the names and present addresses of physicians who have attended or prescribed for you during the last five years. A. No medical treatment in the past five years.

Q. Has anything bearing on your physical condition or family history been omitted in the foregoing questions? A. No.

Q. Have you read or heard read the foregoing questions? A. Yes.

Q. Are your answers as written thereto correct? A. Yes.

That in said application the said Adelia Mockabee gave her age as forty-five years and requested a certificate to be issued in the sum of One Thousand Dollars payable on her death to Ida May Matheny, the plaintiff.

That said application, so signed by the said Adelia Mockabee, was forwarded to the Great Medical Examiner of defendant for examination and approval or rejection as provided in the by-laws, and acting solely in reliance upon the truthfulness of the answers therein, and particularly the foregoing, the said application was approved and filed in the office of the Great Record Keeper, and said benefit certificate issued.

Defendant alleges the several answers in said application, warranted to be true, were not true in fact, and that at the time of making and signing said application the said Adelia Mockabee was not in good health, but was at that time and had been for some time prior thereto and continued thereafter until her death, to be suffering with uterine trouble, nervousness, and excessive uterine hemorrhages, which condition of health and uterine hemorrhages had existed for a long time prior thereto and continued thereafter until her death, and that during the five years previous to the date of said application her answer that she had no medical treatment was not true, and as a matter of fact she had consulted and been prescribed for and was treated by different physicians for said uterine troubles, nervousness and reduced condition of health, and had the true facts as to the condition of her health and the uterine troubles been disclosed in said application the same would not have been approved by the Great Medical Examiner of defendant and said benefit certificate would not

have been issued to her, and by reason of the concealment and misrepresentation of facts in her application said benefit certificate was procured by false and fraudulent representa-

tions of the said Adelia Mockabee as to her physical condition in material particulars which affected her as an insurable risk in defendant order, and this the defendant is ready to verify.

3. And for a further plea the defendant says that by reason of the matters and things in its second plea pleaded, which are here now in this plea pleaded, the Great Executive Committee of the defendant adopted a resolution as follows:

"Whereas, Adelia Mockabee, late a member of Congressional Hive No. 876, located at Washington, D. C., died August 15th, 1917, holding benefit certificate in the Ladies of The Maccabees for \$1,000, being No. 66444, payable on her death to Ida May Matheny, a sister, who now makes claim to the amount thereof; and,

Whereas, Said certificate was issued upon a written application signed by the said Adelia Mockabee in which she warranted the answers in said application to be true, and agreed on her own behalf and on behalf of the beneficiaries that said application and the laws of the Order then in force, or thereafter adopted by the Ladies of The Maccabees, shall form the basis of her contract for life benefit membership, and that any untrue or fraudulent answers or suppression of facts shall vitiate the life benefit certificate and forfeit all payments made thereon; and,

Whereas, On said application she was asked and answered questions as follows:

Question. Are you in good health at the present time?

Answer. Yes.

Question. Have you now, or have you ever had uterine hemorrhage?

Answer. No.

Question. Have you now, or have you ever had any disease of the uterus or its appendages?

Answer. No.

Question. Is any such disease suspected by you?

Answer. No.

22 Question. Are you regular in your monthly periods?

Answer. Yes.

Question. Are you now, or have you ever been troubled with irregular or excessive menstruation?

Answer. No.

Question. Give the names and present addresses of all physicians who have attended or prescribed for you during the past five years.

Answer. No medical treatment in the past five years, and,

Whereas, after the issuance of said benefit certificate and on, to wit, the 13th day of March, 1917, Dr. Isabella Holdom, Great Medical Examiner, made and filed with the Great Record Keeper charges in writing, sworn to by her, against the said Adelia Mockabee, in which it was alleged that the said Adelia Mockabee obtained her membership in said Order by misrepresenting her physical condition in her application, in her answers to the several questions hereinbefore set forth, and alleging that at the time said application was made and signed by the said Adelia Mockabee she was not in good health, and that she was at that time and had been for a long time

prior thereto suffering with uterine trouble and nervousness, and had been attended and prescribed for by physicians for the same, and had her true condition been disclosed in said application, said benefit certificate would not have been issued, and asking that the Great Executive Committee take action on the matter in accordance with the by-laws of the Order which form a part of the contract of membership of the said Adelia Mockabee; and,

Whereas, The said charges being laid before the Great Executive Committee under and by virtue of the authority invested in said committee under the by-laws of the Order, a citation was issued by said committee directing the said Adelia Mockabee to present such proof as she may deem necessary to show that the facts stated in said application were true, to the said committee on the ninth day of May, 1917, at the Modern Maccabee Temple, Port Huron, Michigan, and to show that the certificate was legally issued thereon as provided in the by-laws of the Order and that a copy of said charges together with a copy of the citation of the said committee of time and place of hearing of the same was duly served upon the said Adelia Mockabee, as provided in the laws of the Order; and,

Whereas, Pending the hearing of said charges the said Adelia Mockabee filed a bill of complaint with the Supreme Court of the District of Columbia against the Ladies of the Maccabees, praying therein that an injunction be issued against the said Ladies of the

23 Maccabees, enjoining and restraining it from proceeding further with the hearing of the charges until such time as the said Adelia Mockabee could recover from her sickness sufficiently to make answer thereto, and upon such bill of complaint being filed, an injunction was issued restraining and enjoining the Ladies of the Maccabees from proceeding further with the hearing of such charges, and in accordance with the directions of the court in such case the further hearing of such charges was suspended, and before any further action was taken, the said Adelia Mockabee died, not having recovered from the illness from which she was suffering at the time the said bill of complaint was filed; and,

Whereas, Section 89 of the by-laws of the Order for the year 1916 provides:

'In case a member shall die pending the hearing and determination of such charges, the Great Record Keeper shall notify the beneficiary or beneficiaries of the pending of such charges and the time and place the same shall be heard, and such beneficiary shall have the same right as the member to defend against such charges, and if such charges are finally found to be true, the Great Executive Committee shall have power, by a two-thirds vote, to cancel and annul said benefit certificate in like manner and with like effect as if the member had not deceased, in which case the beneficiary shall have no right under such benefit certificate'; therefore,

Resolved, That the claim of the said Ida May Matheny, beneficiary of the said Adelia Mockabee, not appearing to be a just one, that the hearing of said claim and said charges against the said Adelia Mockabee before the Great Executive Committee will be on the 22d day of November, 1917, at the Modern Maccabee Temple,

Port Huron, Michigan, at the hour of two o'clock, P. M., at which time and place the claimant may appear in person, or by attorney, or by the filing of affidavits, and present such evidence as she may have in refutation of such charges, and to show the justice of said claim; and

Resolved, That the Great Record Keeper serve a copy of the foregoing action of the Great Executive Committee upon the said claimant, Ida M. Matheny, as provided in the laws of the Order."

That a copy of the foregoing action of the Great Executive Committee was duly served upon the said plaintiff by the Great Record Keeper by registered mail addressed to her at the city of Washington, D. C., which was duly received by the said plaintiff.

24 That instead of making answer to said resolution and action of the said Executive Committee as aforesaid, and as was plaintiff's duty to do as beneficiary under said certificate and giving defendant Order an opportunity to investigate and pass upon the validity of said death claim after a full hearing of all the facts, the said plaintiff on to wit the 6th day of November 1917 commenced this suit upon said benefit certificate and on to wit the 21st day of November 1917 filed a bill of complaint in the Supreme Court in the District of Columbia in Equity, being No. 35576, upon which on said date an injunction was issued by said court as follows: "On consideration of the original bill heretofore filed herein it is this 21st day of November 1917 by the court ordered that defendant, its officers, agents, attorneys, representatives, committees, employees and subordinates be and they are hereby, until the further order of the court, enjoined as prayed in said bill, providing a copy of this order with said bill be served on the defendant by serving same on the Superintendent of Insurance in and for the District of Columbia before the 22nd day of November 1917 at the hour of two o'clock p. m." Signed "Ashley M. Gould, Justice." That the bill of complaint prayed that an injunction issue against defendant enjoining it from proceeding further with said charges, heretofore referred to, until the final determination of said suit at law, which said bill of complaint by reference is made a part of this answer.

That a copy of said bill of complaint and injunction was served upon the Superintendent of Insurance of the District of Columbia on to wit the 21st day of November 1917 who immediately wired defendant at Port Huron, Michigan of the service of the same, and which was subsequently received by mail, and in obedience to the command of said writ said hearing before said Great Executive Committee was continued until the next meeting and said hearing has been continued from meeting to meeting until said injunction is disposed of.

25 That said plaintiff did not appear or make any answer to the proceedings pending before the Great Executive Committee, which Tribunal was proceeding regularly under the laws of the Order hereinbefore referred to and as it had a right to do under the contract between the said Adelia Mockabee and defendant, and said action at law is brought in contravention of the contract between the said

Adelia Mockabee and this defendant, wherefore she ought not to have or maintain her said action in the declaration set forth, as said defendant has exclusive power to hear and determine the said claim, and this the defendant is ready to verify.

ARCHER & SMITH,
JOHN B. McILWAIN,
Attorneys for Defendant.

Affidavit.

* * * * *

DISTRICT OF COLUMBIA, *To wit:*

James B. Archer, being first duly sworn on oath says he is the agent and attorney of the defendant and files this affidavit in its behalf; that he denies the right of the plaintiff to recover the
26 whole or any part of her claim sued upon for the reasons following:

The defendant is a Fraternal Beneficial Association, incorporated and doing business under and by virtue of the laws of the State of Michigan:

The Sections of the Public Acts of the State of Michigan for the year 1913, providing for the incorporation and operations of Fraternal Beneficial Associations, set forth in the defendant's second and third pleas and relied upon for its defense, are correctly and accurately set forth:

The Articles of Incorporation of the defendant relied upon for its defense and set forth in its said pleas are correctly and accurately set forth therein:

The by-laws of the defendant relied upon for its defense and set forth in its said pleas are correctly and accurately set forth therein.

The questions and answers set forth in said plea as being part of the application of the said Adelia Mockabee are correctly and accurately set forth therein.

The resolution of the Great Executive Committee, set forth in the said pleas, is correctly and accurately set forth therein.

Affiant is informed and believes and upon such information and belief avers and expects to prove at the trial of this cause that a copy of the resolution of the Great Executive Committee of the defendant was duly served upon the plaintiff by the Great Record Keeper by registered mail and was duly received by her, but that the plaintiff has failed and refused to appear at the hearing of said claim, within the order fixed by said resolution and notice or to appear at any hearing of said claim within the same, or to produce any evidence
27 by affidavit or otherwise of the justice of the same.

JAMES B. ARCHER.

Subscribed and sworn to before me this 18th day of March, 1918.

J. R. YOUNG,

Clerk,

By ALF. G. BUHRMAN,

Ass't Clerk.

Part of Pleas of Defendant Filed by Stipulation.

Filed March 22, 1918.

* * * * *

It appearing in one of the pleas of defendant herein, that reference is made to the Bill of Complaint in Equity Cause No. 35576, in this court, and said reference is in this language

"Said Bill of Complaint by reference is made a part of this answer."

and defendant now wishing to have a copy of said bill attached to said plea, it is hereby stipulated by attorneys for parties hereto that defendant may attach a copy of said Bill of Complaint to said plea, to have the same force and effect as a part thereof as if it had been attached to and filed with said plea when it was filed.

Parties hereto agree to the above this 21 day of March, 1918.

JEFFORDS & DUTTON,
Attorneys for Plaintiff.

JAMES B. ARCHER,
Of Attorneys for Defendant.

28

Original Bill.

Filed March 22, 1918.

In the Supreme Court of the District of Columbia.

No. 35576.

IDA MAY MATHENY, Plaintiff,

VS.

LADIES OF THE MODERN MACCABEES, a Corporation, Defendant.

Plaintiff, Ida May Matheny, exhibits this her original bill against defendant, Ladies of the Modern Maccabees, a corporation, and respectfully shows as follows:

1. Plaintiff is a citizen of the United States, a resident of the District of Columbia, is more than twenty-one years old, and brings this suit in her own right as herein appears.

2. Defendant is a corporation duly incorporated under the laws of the State of Michigan and doing a life insurance business as a benefit order and association in the District of Columbia and has subordinate bodies called "Hives" in the State of Michigan and in the District of Columbia and elsewhere, and on to-wit January 6, 1916 and for sometime prior thereto and ever since, has maintained one or more Hives in the District of Columbia engaged in said business and is sued in its own right as herein appears.

3. On to-wit, January 6, 1916, Adelia Mockabee was a member of one of said Hives and as such member defendant duly issued and delivered to her as of that date its benefit certificate and life insurance policy in words and figures as follows:

29 "Incorporated in 1891, under the Laws of the State of Michigan.

Home Office, Modern Maccabee Temple, Port Huron, Mich.

SCHEDULE 3.

No. 66444.	Ladies of the Modern Maccabees.	\$1,000.
Age 45		Rate of Assessment. \$2.21.

Benefit Certificate.

This certifies, That Lady Adelia Mockabee has been admitted to membership in the Ladies of the Modern Maccabees, and is entitled to all the rights, benefits and privileges therein, in accordance with the laws of the Order; under Whole Life Schedule 3.

This certificate is issued under an application for membership and medical examination furnished by the member in writing, signed by her, and warranted to be absolutely true in every particular as written, which application, medical examination, and the Laws of the Order now in force or that may hereafter be adopted, and this certificate shall constitute the contract between the member and the Order.

That at her death [except death from small-pox]* the amount of one assessment upon the Benefit membership, not exceeding the sum of One thousand Dollars, will be paid as a benefit to Ida May Matheny bearing relationship to her of Sister, upon filing the required proofs of her death and the surrender of this certificate within twelve calendar months from date of death, provided, that her application for membership and medical examination are absolutely true as written, and that she shall have in every particular, complied with the Laws of the Order now in force, or that may hereafter be adopted.

In testimony whereof, the Ladies of the Modern Maccabees has caused its Great Commander and Great Record Keeper to sign their names and affix hereto its official seal this 6th day of January, 1916.

[Corporate Seal.]

FRANCES E. BURNES,
Great Commander.
EMMA E. BOWER,
Great Record Keeper.

[*Words enclosed in brackets erased in copy.]

30

(On the back thereof is as follows.)

No. 66444.

\$1,000.

*Whole Life
Benefit Certificate.*

SCHEDULE 3.

Issued by The
Ladies of the Modern Maccabees.To Lady
Adelia Mockabee
of Congressional
Hive, No. 876, Located at
Washington,
State of D. C

Date Admitted Dec. 31, 1915.

Age 45. Rate \$2.21.

Occupation Clerk.

First Assessment \$1.

Application for Change of Beneficiary and New Certificate.

I, ——— of — Hive, No. —, to whom the within certificate was issued, do hereby revoke my former designation of beneficiary and do hereby designate as my beneficiary ——— bearing relationship to me of —. Occupation —.

I enclose herewith Fifty Cents to pay for New Certificate.

Witness my hand and seal this — day of — 191—.

———, [SEAL.]

Applicant.

Consent given this — day of —, 191—, and New Certificate bearing same number ordered issued.

———,
*Great Record Keeper.**Application for Transfer to Schedule —.*

Transfers Can Only Be Made from a Lower to a Higher Plan.

31 I, ——— do hereby surrender my certificate No. — and request that a new one be issued to me in Schedule — upon which I agree to pay the rating in said Schedule — at my

attained age at date of transfer. I have paid the last Assessment No. — due this month in Schedule —, and in all other respects will conform to and abide by the laws of the Order.

_____,
Applicant.

Consent given this — day of — 191— and new certificate bearing same number ordered issued.

_____,
Great Record Keeper.

With said Life Insurance Policy nothing was at that time or at any other time delivered to said Adelia Mockabee as a part of said policy.

4. Thereafter said Adelia Mockabee continued to be a member of said Hive and its successor, by consolidation until her death on to-wit, August 15, 1917.

During all the time since said Adelia Mockabee became such member, as aforesaid, she paid and caused to be paid all her dues and assessments and in all other respects conformed to and complied with the requirements, laws, rules and regulations of defendant, and was at the time of her death in good standing in said Hive and in defendant.

5. On to-wit, March 13, 1917, one Isabella Holdom designating herself as Great Medical Examiner of defendant, filed with its Great Executive Committee what purports to be certain charges against said Adelia Mockabee.

Defendant then notified said Adelia Mockabee that a hearing on said charges would take place May 9, 1917, at Port Huron, Michigan and later postponed said hearing to May 23, 1917.

32 6. Meantime defendant sent certain of its officers from the State of Michigan to the District of Columbia and they personally demanded of plaintiff that she give up said certificate and release defendant from all liability thereunder, and prepared and presented to her and asked her to sign, for that purpose, a release which is in words and figures as follows:

“Ladies of the Maccabees,
Port Huron, Michigan.

I, Adelia Mockabee, life benefit member of Congressional Hive No. 876 of the Ladies of the Maccabees, do hereby surrender my life benefit certificate No. 66444 dated 1-6-1916 and ask that the money which I have paid into the Order be returned to me.

Signed _____.
Dated _____.

Witnessed _____.”

Said Adelia Mockabee refused to sign said release and to give up said certificate and release defendant from liability by reason of it.

7. At the time these charges were made against said Adelia Mocka-

bee she was seriously ill and so continued until the time of her death August 15, 1917.

8. On to-wit, April 19, 1917, the Hive of which said Adelia Mockabee was a member was consolidated with the District of Columbia Hive and the membership of said Adelia Mockabee became thereby transferred to said Hive.

9. Said charges were and are in every respect and particular entirely and wholly false and untrue and without any foundation whatever in any fact or facts or in any circumstance or circumstances.

33 10. Plaintiff says that defendant does not believe said charges to be true, but they were made and said resolutions passed and said notice given as a part of a plan and subterfuge for driving said Adelia Mockabee out of the Order and organization of defendant, without cause, and depriving her of said benefit certificate and the rights and privileges thereunder to her and to the beneficiary named therein.

11. Shortly after copy of said charges and notice had been received by mail by said Adelia Mockabee she filed her bill in this court making the same allegations that are made herein and others and asked that defendant be enjoined from proceeding on said charges and from cancelling or revoking or impairing said benefit certificate and contract of insurance or any rights therein or thereunder, and on consideration of said bill and one affidavit in support thereof and on application of attorneys for said Adelia Mockabee this court enjoined defendant as prayed in said bill and said injunction has never been dissolved, modified or set aside. Defendant duly made answer to said bill.

12. Thereafter said Adelia Mockabee continued to pay her dues to defendant and to the "Hive" of defendant of which she was a member and she paid and tendered her dues until the time of her death and at that time was in good and regular standing in said Hive and in defendant.

Said Adelia Mockabee never recovered from the illness with which she was suffering at the time said charges were made against her, but continuously declined and grew worse until her death.

13. During all of the last illness of said Adelia Mockabee she was for many months in the home of plaintiff herein who helped
34 to take care of her and made a home for her and for her nurse and nurses who were continuously in attendance upon her, and arranged for and took charge of her funeral which was at and from the home of plaintiff herein.

During said last illness and since that time plaintiff has paid many of the bills necessarily incurred for and on behalf of said Adelia Mockabee.

Said Adelia Mockabee had never been married and plaintiff herein is her only sister and executrix of her will which has heretofore been admitted to probate and record in this court.

14. Said benefit certificate, insurance policy and contract of insurance on the life of said Adelia Mockabee so issued as aforesaid, named the plaintiff herein as the sole beneficiary and upon the death of said

Adelia Mockabee, plaintiff became and was, upon making proofs of said death, entitled to have and receive from defendant for and in consideration of said benefit certificate and insurance policy the full sum of One thousand dollars the face value thereof. After the death of said Adelia Mockabee proof of her death was duly made and plaintiff notified defendant that she claimed from it said One thousand dollars insurance and she did all and every thing necessary to be done by her to entitle her to same, and it is now due and payable to her by defendant.

15. Defendant thereupon pretended to proceed under a pretended authority to renew the said charges against Adelia Mockabee and called upon plaintiff herein to answer same in Port Huron, Michigan, November 22, 1917, and copy of said charges and notice are in words and figures as follows:

35

"PORT HURON, MICH., October 18, 1917.

Ida May Matheny, 631 F St. N. E., Washington, D. C.

DEAR MADAM: In the matter of the death claim of Adelia Mockabee.

The following is an excerpt from the proceedings of a meeting of the Great Executive Committee, Ladies of The Maccabees, at a meeting held in Port Huron, Michigan, October 18, at which a full board was present, which was adopted:

Whereas, Adelia Mockabee, late a member of Congressional Hive No. 876, located at Washington, D. C., died August 15, 1917, holding benefit certificate in the Ladies of The Maccabees for \$1,000, being No. 66444 payable on her death to Ida May Matheny, a sister, who now makes claim to the amount thereof; and,

Whereas, Said certificate was issued upon a written application signed by the said Adelia Mockabee in which she warranted the answers in said application to be true, and agreed on her own behalf and on behalf of the beneficiaries that said application and the laws of the Order then in force, or thereafter adopted by the Ladies of The Maccabees, shall form the basis of her contract for life benefit membership, and that any untrue or fraudulent answers or suppression of facts shall vitiate the life benefit certificate and forfeit all payments made thereon; and,

Whereas, On said application she was asked and answered questions as follows:

Question. Are you in good health at the present time?

Answer. Yes.

Question. Have you now, or have you ever had uterine hemorrhage?

Answer. No.

Question. Have you now, or have you ever had any disease of the uterus or its appendages?

Answer. No.

Question. Is any such disease suspected by you?

Answer. No.

Question. Are you regular in your monthly periods?

Answer. Yes.

36 Question. Are you now, or have you ever been troubled with irregular or excessive menstruation?

Answer. No.

Question. Give the names and present address of all physicians who have attended or prescribed for you during the past five years.

Answer. No medical treatment in the past five years; and,

Whereas, After the issuance of said benefit certificate, and on, to wit, the 13th day of March, 1917, Dr. Isabella Holdom, Great Medical Examiner, made and filed with the Great Record Keeper charges in writing, sworn to by her, against the said Adelia Mockabee, in which it was alleged that the said Adelia Mockabee obtained her membership in said Order by misrepresenting her physical condition in her application, in her answers to the several questions hereinbefore set forth, and alleging that at the time said application was made and signed by the said Adelia Mockabee she was not in good health, and that she was at that time and had been for a long time prior thereto suffering with uterine trouble and nervousness, and had been attended and prescribed for by physicians for the same, and had her true condition been disclosed in said application, said benefit certificate would not have been issued, and asking that the Great Executive Committee take action on the matter in accordance with the by-laws of the Order which form a part of the contract of membership of the said Adelia Mockabee; and,

Whereas, The said charges being laid before the Great Executive Committee under and by virtue of the authority invested in said committee under the by-laws of the Order, a citation was issued by said committee directing the said Adelia Mockabee to present such proof as she may deem necessary to show that the facts stated in said application were true, to the said committee on the ninth day of May, 1917, at the Modern Maccabee Temple, Port Huron, Michigan, and to show that the certificate was legally issued thereon as provided in the by-laws of the Order and that a copy of said charges together with a copy of the citation of the said committee of time and place of hearing of the same was duly served upon the said Adelia Mockabee, as provided in the laws of the Order; and,

Whereas, Pending the hearing of said charges the said Adelia Mockabee filed a bill of complaint with the Supreme Court of the District of Columbia against the Ladies of The Maccabees, praying therein that an injunction be issued against the said Ladies of The Maccabees, enjoining and restraining it from proceeding further with the hearing of the charges until such time as the said Adelia Mockabee could recover from her sickness sufficiently to make answer thereto, and upon such bill of complaint being filed, an injunction was issued restraining and enjoining the Ladies of The Maccabees from proceeding further with the hearing of such charges, and in accordance with the direction of the court in such case the further hearing of such charges was suspended, and before any further action was taken, the said Adelia Mockabee died, not having recov-

37

ered from the illness from which she was suffering at the time the said bill of complaint was filed; and,

Whereas, Section 89 of the by-laws of the Order for the year 1916 provides:

"In case a member shall die pending the hearing and determination of such charges, the Great Record Keeper shall notify the beneficiary or beneficiaries of the pending of such charges and the time and place the same will be heard, and such beneficiary shall have the same right as the member to defend against such charges, and if such charges are finally found to be true, the Great Executive Committee shall have power, by a two-thirds vote, to cancel and annul said benefit certificate in like manner and with like effect as if the member had not deceased, in which case the beneficiary shall have no right under such benefit certificate"; therefore,

Resolved, That the claim of the said Ida May Matheny, beneficiary of the said Adelia Mockabee, not appearing to be a just one, that the hearing of said claim and said charges against the said Adelia Mockabee before the Great Executive Committee will be on the 22nd day of November, 1917, at the Modern Maccabee Temple, Port Huron, Michigan, at the hour of two o'clock, P. M., at which time and place the claimant may appear in person, or by attorney, or by the filing of affidavits, and present such evidence as she may have in refutation of such charges, and to show the justice of said claim; and

Resolved, That the Great Record Keeper serve a copy of the foregoing action of the Great Executive Committee upon the said claimant, Ida M. Matheny, as provided in the laws of the Order.

Adopted by the following yea and nay vote:

Yeas—Mesdames Timmony, Holthe, Cate, Williamson, Torrey, Bower, Burns.

Nays—None.

Yours very truly,

[CORPORATE SEAL.]

EMMA E. BOWER,
Great Record Keeper.

J. B. McI.—McELLEN.

38 This is to certify that the above is a true statement in regard to the action taken by the Great Executive Committee, Ladies of The Maccabees, in regard to the Adelia Mockabee claim.

EMMA E. BOWER,
Great Record Keeper.

16. Plaintiff understands this action of defendant to be a rejection of her claim for said One thousand (\$1,000) Dollars insurance and denial of her right to same, and thereupon the plaintiff began in this court her suit at law against defendant to collect said thousand dollars of insurance and due service has been made upon defendant of the said suit and it is now pending in this court and plaintiff intends to prosecute same to a final decision.

17. Plaintiff is a married woman and is almost entirely without

means and resources and has been overworked for the past year by reason of the work for said Adelia Mockabee in her home and has involved herself in considerable indebtedness for and on behalf of her sister, Adelia Mockabee and is without means to make the trip to Port Huron, Michigan, for hearing on said charges and feels and says that it is an injustice to require her to spend the time and money necessary to make the trip to Port Huron, Michigan, and a further injustice to call upon her to make a defense against alleged charges pretended to have been made against her sister lately deceased.

Plaintiff further says it is simply out of the question in the present circumstances for her to go to Port Huron, Michigan, to defend said charges and in default of going there, she is informed and believes that said charges will be determined against plaintiff and
39 against the validity of said policy of life insurance and plaintiff will lose all of same and such loss will be complete and irretrievable, and she can be saved from same only by an injunction herein to prevent defendant proceeding further with said charges, until after final determination of said suit at law.

18. Plaintiff is informed and believes and avers that she has an immediate present right to all of said One thousand (\$1,000) dollars of insurance and that same is now all due and payable to her from defendant, and she is, by the means of said charges and notice, being wrongfully deprived of the payment of same to her.

If it be true that defendant has a good and valid defense to said suit at law to collect said life insurance policy, then and in that event there is no reason why such defense should not be made in said lawsuit.

Premises considered, plaintiff respectfully prays as follows:

1. That process issue herein as required by law and rules of court directed to defendant.

2. That defendant, its officers, agents, attorneys, representatives, committees, employees, subordinates be enjoined temporarily and permanently from proceeding with said hearing on said charges on November 22nd, 1917, or before that time and thereafter until the final determination of said lawsuit by plaintiff against defendant to collect said One thousand dollars of insurance.

3. That the defendant be enjoined from cancelling or revoking or impairing in any way said benefit certificate, life insurance policy and contract of insurance or any rights therein or thereunder to which plaintiff is entitled.

40 4. That defendant be enjoined from proceeding in any court or courts, in any cause or causes in equity or chancery to the prejudice of plaintiff in any of her rights as the sole beneficiary named in said policy of life insurance.

5. That plaintiff may have leave to amend herein at any time if advisable or desirable.

6. That publication may be had herein, if necessary.

7. That plaintiff may have any and all such other and further relief herein as she may be entitled to receive and to the court shall seem meet.

IDA MAY MATHENY.

I am the plaintiff herein and know the contents of the foregoing bill which I have read and I verily believe the statements therein made to be true.

IDA M. MATHENY.

Signed and sworn to before me at Washington, D. C., November 21, 1917.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

JEFFORDS & DUTTON,
Att'ys for Petitioner.

41

Memorandum.

March 22, 1918.—Motion for Judgment under 73rd rule, filed.

Supreme Court of the District of Columbia.

FRIDAY, April 5, 1918.

Session resumed pursuant to adjournment, Mr. Justice Gould presiding.

* * * * *

Upon consideration of the motion of plaintiff filed herein for judgment for want of a sufficient affidavit of defense, it is ordered that said motion be, and it is hereby granted, to which defendant by its Attorney prays an exception which is here noted.

Therefore it is considered that the plaintiff herein recover against the defendant the sum of One thousand dollars (\$1,000.00) with interest thereon from this date, being the money payable by said defendant to plaintiff by reason of the premises, together with the costs of suit, to be taxed by the Clerk, and have execution.

From the foregoing judgment, the defendant by its Attorneys, in open Court, notes an appeal to the Court of Appeals of the District of Columbia, whereupon the penalty of a bond to operate as a supersedeas is hereby fixed in the sum of Two thousand dollars (\$2,000.00) or, for costs in the sum of One hundred dollars (\$100.00).

42

Memorandum.

April 29, 1918.—Supersedeas bond approved and filed.

Assignments of Error.

Filed June 1, 1918.

* * * * *

The defendant assigns as error the following:

1. The plaintiff's affidavit of merit was insufficient.
2. The defense of fraud and false representations was available to the defendant, notwithstanding the application for membership was not attached to the benefit certificate.

3. The association had exclusive authority to hear and determine the claim in the first instance and in the absence of fraud.

ARCHER & SMITH,
Attorneys for Defendant.

Designation of Record.

Filed June 1, 1918.

* * * * *

The Clerk will please make up a transcript of the record on appeal and include therein:

Declaration and affidavit filed November 6, 1917.

Plea in abatement, filed January 11, 1918.

43 Motion to strike plea, filed January 11, 1918.

Memo.: Minute entry striking plea in abatement, of January 11, 1918.

Pleas and affidavit, filed March 19, 1918.

Stipulation incorporating Bill, filed March 22, 1918.

Copy of Bill in Equity, filed March 22, 1918. No. 35576.

Memo.: Motions for judgment under 73rd rule, filed March 22, 1918.

Minute entry showing judgment and exception of April 5, 1918.

Memo.: Of Appeal of April 5, 1918.

Memo.: of approval and filing of supersedeas bond, April 29, 1918.

Assignments of Error, filed June 1, 1918.

Designation of Record, filed June 1, 1918.

ARCHER & SMITH,
Attorneys for Defendant.

44 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 43, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 60791 at Law, wherein Ida May Matheny is Plaintiff and Ladies of the Maccabees, otherwise known as Ladies of the Modern Maccabees, a corporation, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 14th day of June, 1918.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3191. Ladies of the Maccabees, otherwise known, &c., appellant, vs. Ida May Matheny. Court of Appeals, District of Columbia. Filed Jun- 15, 1918. Henry W. Hodges, clerk.